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IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHHATTISGARH)

WRIT PETITION NO. 3524 OF 2003

PETITIONER : Panna Lal Agrawal,son of Duli Chand Agrawal, aged about 70 years, Retired Principal, resident of Shanti Nagar, District Rajnandgaon,(C.G.),

V E R S U S

RESPONDENTS : 1. State of Chhattisgarh, through Secretary, Department of Education, D.K.S.Bhawan,Mantralaya, Raipur, District-Raipur,(C.G.)

: 2. Director, LOK SHIKSHAN SANCHALNALAY, Chhattisgarh.

: 3. District Education Officer, Rajnandgaon, District-Rajnandgaon,(C.G.)

: 4. Superintendent of Police, Rajnandgaon,District-Rajnandgaon, (C.G.)

: 5. The Collector, Rajnandgaon, District-Rajnandgaon,(C.G.)

P. R. No. 3324/03 Sd/-illegible
Presented by Shri 26.10.03
dated

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Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

AFR

THE HIGH COURT OF CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 3524 of 2003

Petitioner : Panna Lal Agrawal

Versus

Respondents : State of Chhattisgarh & others

Post for order on 6th December, 2006

Sd/-
Satish K. Agnihotri
Judge

/100

THE HIGH COURT OF CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 3524 of 2003

Petitioner : Panna Lal Agrawal

Versus

Respondents : State of Chhattisgarh & others

Shri Sunil Sahu, counsel for the petitioner.
Shri A.S. Kachhawaha, Government Advocate for the respondents/State.

ORDER

(6th December, 2006)

1. The petitioner has filed this writ petition under Article 226/227 of the Constitution of India challenging the validity of the impugned order dated 30.9.2003 (Annexure P/1), whereby the recovery of Rs. 1,41,892.50/- was ordered from the petitioner. The petitioner further prayed for grant of gratuity with interest and full pension w.e.f. 16.10.1994.

2. The indisputable facts in brief, are that the petitioner, while posted as a Principal, Girls Higher Secondary School, Chuikhadan, District Rajnandgaon, was suspended on 22.3.1993 (Annexure P/3) for gross financial irregularities, committed by him as Drawing and Disbursing Officer, Government Higher Secondary School, Udaipur, District Rajnandgaon. On the same day i.e. 22.3.1993, the petitioner was issued a charge-sheet containing two charges for misappropriation of funds to the

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extent of Rs. 2,83,785/- during the period between 1.10.1987 to 19.6.1990. The petitioner submitted his reply to the charge-sheet vide letter dated 16.4.1993 (Annexure P/4), denying all the allegations and asking for a copy of the documents, cash book, voucher etc., for the period between 1.10.1987 to 19.6.1990.

3. The Deputy Director, Public Instructions, Rajnandgaon conducted the enquiry after providing sufficient opportunity of hearing to the petitioner and other co-delinquent officer, one Shri M.P. Agrawal, Accountant, came to the following conclusion:-

> "इन सब प्रकरणों के जांच के उपरान्त यह पाया गया कि श्री एम0पी0 अग्रवाल लेखापाल 2,83,785/– रू. राशि के कपट पूर्ण आहरण कर भ्रष्टाचार एवं गबन किया जिसके लिए वे प्रत्यक्ष दोषी हैं। इस राशि से 40,000/– रू. का प्रकरण खेंरागढ़ न्यायालय में चल रहा है। श्री पी0एल0 अग्रवाल अहरण एवं संवितरण अधिकारी वित्तीय अनियमितता बरतने एवं उन पर नियंत्रण नही रखने के प्रत्यक्ष दोषी है। यदि वे सजग रहते तो इतनी बड़ी राशि की अफरा तफरी नहीं हो सकती थी उन्होने संयुक्त संचालक दुर्ग संभाग दुर्ग को अपने पत्र कमांक 164/दिनांक 2–9–89 (सहपत्र 14) के तहत शा0उ0मा0 शाला उदयपुर संस्था के प्रशासन और वित्तीय प्रबंध में गंम्भीर अनियमितताये और शालेय निधियों की चिन्तनीय अफरा तफरी की और ध्यान दिलाया था। अतः उस समय भी शाला की गंभीर एवं चिन्तनीय स्थिति को देखते हुए उन्हे आहरण एवं वितरण व्यवस्था को चुस्त दुरूस्त कर संतर्क हो जाना था। किन्तु उन्होने ऐसा नही किया। अतः वे अपने कर्तव्यों के निर्वहन के दायित्व से कदापि मुक्त नही हो सकते प्राचार्य श्री अग्रवाल ने आहरण एवं वितरण अधिकारी का दायित्व रहते हुए भी म0प्र0 कोषालय संहिता के नियम 53 के प्रावधानों की घोर उपेक्षा की।

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अतः वे म0प्र0 सिविल सेवा आचरण नियम 1965 के नियम 3 (1) के प्रतिकुल आचरण के घोर दुराचरण के दोषी है।"

and report was accordingly submitted on 22.7.1996.

4. The second show-cause notice with a copy of the report was sent to the petitioner vide letter dated 26.2.1998 of the Joint Director, Public Instructions, Durg. The petitioner submitted his reply vide letter dated 12.3.1998 (Annexure P/8).

5. The Director, Public instructions, Government of Chhattisgarh, Raipur, agreeing with the enquiry report and after having considered the representation filed by the petitioner to the second show-cause notice, which was served on the petitioner along with the enquiry report, directed for recovery of 50% of the total amount i.e. 2,83,785/-, from the petitioner. In the enquiry, since the petitioner and one Shri M.P. Agrawal, the then Accountant, were found equally responsible for misappropriation of funds for a sum of Rs. 2,83,785/-, 50% of the total amount i.e. 1,41,82.50/- was to be recovered from the petitioner. The other co-delinquent officer, Shri M.P. Agrawal, Accountant, in the meantime, died. The petitioner also retired from service, on attaining the age of superannuation w.e.f. 16.10.1994.

6. Being aggrieved, the petitioner filed this petition for the relief, as stated above.

7. Shri Sunil Sahu, learned counsel appearing for the petitioner would submit that since the petitioner had already retired from service, no recovery can be made from the petitioner under Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976 (hereinafter referred to as "the Rules, 1976"). The petitioner did

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not challenge the validity of the impugned order on any other ground that the enquiry was perverse, finding was on the basis of no evidence or there was any infirmity, irregularity or illegality in the process of the enquiry.

8. It was next contended that since the accountant was responsible to deal with the accounts, the entire liability ought to have been fastened on the accountant and it was not possible for the petitioner to supervise the financial aspects of the Government Higher Secondary School, Udaipur, District Rajnandgaon, wherein he was posted as Drawing and Disbursing Officer, during the period between 1.10.1987 to 19.6.1990.

9. Shri A.S. Kachhawaha, learned Deputy Government Advocate, appearing for the respondents/State, per contra, would submit that a proper enquiry was held and conclusion of the enquiry officer was on the basis of sufficient evidence, after having provided sufficient opportunity of hearing to the petitioner. It was next contended that since the departmental enquiry was initiated by issuing charge-sheet on 22.3.1993 when the petitioner was in service, therefore, it cannot be contended by learned counsel for the petitioner that the departmental enquiry was initiated after the retirement of the petitioner and no recovery could be ordered under Rule 9 of the Rules 1976. Learned counsel appearing for the respondents further contended that this Court has limited jurisdiction to look into the infirmity, illegality or irregularity in the departmental proceedings, which has not been challenged by the petitioner.

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10. After having heard learned counsel for the parties and having perused the pleadings and documents appended thereto, it is apparent that the enquiry was initiated on 22.3.1993 and on the same day the charge-sheet was issued to the petitioner. The petitioner has submitted his reply to the charge-sheet and participated in the enquiry. The petitioner has not raised any grievance with regard to the conduct of the enquiry or that there was any infirmity, illegality or irregularity or no material was available for holding the petitioner guilty of financial irregularity. This contention of the petitioner that the recovery amount cannot be ordered, after retirement of the petitioner from the service, is not tenable.

11. Rule 9 of the Rules, 1976 reads as under :-

"9. Right of governor to withhold or withdraw pension.-(1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the State Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below [2][the minimum pension as determined by the Government from time to time];

(2) (a) The departmental proceedings [3][xxx], if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government Servant, be deemed to be

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proceedings under this rule and shall be continued an concluded by the authority by which they were commenced, in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor.

(b) The departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment:-

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

[1](iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings:-

(a) in which an order of dismissal from service could be made in relation to the Government servant during his service in case it is proposed to withhold or withdraw a pension or part thereof whether permanently or for a specified period; or

(b) in which an order of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders could be made in relation to the Government servant during his service if it is proposed to order recovery from his pension of the whole or part of any pecuniary loss caused to the Government].

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) xxx xxx xxx"

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Rule 9 of the Rules, 1976 clearly provides for recovery in case the departmental enquiry was initiated before the retirement of an employee.

12. In the present case, the petitioner retired w.e.f. 16.10.1994 and the enquiry was initiated on 22.3.1993. The petitioner and Shri M.P. Agrawal, the then Accountant (other co-delinquent officer), were found guilty for misappropriation of funds to the extent of Rs. 2,83,785/-. The petitioner was rightly held responsible for making payment of 50% of the total amount i.e. Rs. 1,41,892.50/-. The order is just and proper and does not warrant any interference in the facts and circumstances of the case.

13. It is well settled principles of law that the Court, while exercising its power of judicial review can go into the decision making process, but not the decision itself. In the present case, no perversity, illegality, irregularity and impropriety is alleged and found in the decision making process.

14. For the reasons aforementioned, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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